UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,929	06/23/2003	Kathiravan Sengodan	BEAS-01351US3	8047

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EXAMINER
STEELMAN, MARY J

ART UNIT	PAPER NUMBER
2191	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/601,929	SENGODAN, KATHIRAVAN
	Examiner	Art Unit	
	Mary J. Steelman	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>06/23/2003, 09/ 25/ 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-14</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-14</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>23 June 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>O9|25|03</u>

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-14 are pending.

Information Disclosure Statement

2.   IDS received 09/25/2003 has been considered.

Specification

3.   The use of the trademarks (as an example: JAVA, JMS, JMX) has been noted in this

application (Specification, Abstract, Drawings and Claims) . It should be capitalized wherever it

appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary

nature of the marks should be respected and every effort made to prevent their use in any manner

which might adversely affect their validity as trademarks.

Examiner requests Applicant to fill in the blank lines of page 1.

Examiner requests the explicit term followed by the acronym in parenthesis be provided

at the initial use of such acronyms.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

5.   Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention.

See MPEP 7.35.01 Trademark or Trade Name as a Limitation in the Claim

Claims 1, 5, 6, 8, 12, and 14 contain the trademark/trade name JMS/JMS. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See Ex parte Simpson, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe byte code programming language and, accordingly, the identification/description is indefinite.

The trademark JAVA is improperly relied upon in the claims to incorporate the technical features of a particular programming language environment. However, the trademark JAVA can only properly define the source of the programming language environment, namely Sun Microsystems, Inc. Accordingly, the identification/description is indefinite.

Sun Microsystems, Inc. is the sole producer and/or licenser of JAVA products. The trademark JAVA identifies the source of the products and not the products themselves. In contrast, for example, C++ is a name used in trade to identify a particular nonproprietary programming language conforming to an accepted standard. Products and services incorporating the name C++ are produced by numerous sources. Further, the technologies identified using the trademark JAVA are continuously evolving. An example of this evolution can be found in "JSR 14: Add Generic Types To The Java™ Programming Language", which describes a proposed amendment

to the JAVA Language Specification submitted by Sun Microsystems, Inc., in 1999 and pending

approval by the JAVA COMMUNITY PROCESS Program. In view of the statements presented

above, it is asserted that the trademark JAVA has no fixed definite technical meaning.

Accordingly, a rejection under 35 U.S.C. 112, second paragraph, based on the use of the

trademark JAVA as a limitation in a claim, is proper.

Sun Microsystem publishes information related to the use of their trademarks at:

http://www.sun.com/policies/trademarks

Double Patenting

6.   The nonstatutory double patenting rejection is based on a judicially created doctrine

grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection

is appropriate where the conflicting claims are not identical, but at least one examined

application claim is not patentably distinct from the reference claim(s) because the examined

application claim is either anticipated by, or would have been obvious over, the reference

claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225

USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*

Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163

USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may

be used to overcome an actual or provisional rejection based on a nonstatutory double patenting

ground provided the conflicting application or patent either is shown to be commonly owned

with this application, or claims an invention made as a result of activities undertaken within the

scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal

disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR

3.73(b).

7.   Claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims of copending Application No. 10/601898,

10/602038, and 10/602037. Although the conflicting claims are not identical, they are not

patentably distinct from each other because:

In the instant application, 10/601,929, claims 1-14 are directed towards a user entering markup

language components, a command processor that converts the markup language into JMS or

JMX system operations, and communicates said markup language components to a server.

As an example:

10/601898 Claims 1-20 are directed towards a user entering markup languages and

communicating to a remote server whereby a command processor converts the markup language

into JMS or JMX system operations.

10/602038 Claims 1-18 are directed towards a user editing and modifying markup language

programs that access JMS interfaces, parsing and communicating to a command processor, and a

command processor that converts the markup language components into JMS or JMX system

operations.

10/602037 Claims 1-10 are directed towards accessing JMS using a markup language, a source

file containing markup language, parsing and communicating to a command processor and

converting the markup language into JMS or JMX system operations.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting

claims have not in fact been patented.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

9.   Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent

Application Publication 2003/0177477 A1 to Fuchs, in view of US Patent 6,753,889 B1 to

Najmi.

Per claim 1:

A system including a command-line interface for use with a JMS mark-up language, comprising:

-an application including a command-line user interface that executes on a client machine and

allows a user to enter markup language components;

Fuchs: See FIG. 7 & [0025], [0290-0296]-A command handler 2540 may process user input: as

a command line input...load descriptors (e.g. XML)...

-a command processor that converts the markup language components into one of JMS or JMX

system operations and executes said JMS or JMX system operations at a remote server.

Fuchs disclosed: [0300-0301]-Create and deliver a MIB (MIB-management information base, a

database of objects. A device defined by MIB is monitored by transport protocol tools.), [0123]-

JAVA Dynamic Management Kit (an implementation of JMX...)

Fuchs failed to explicitly disclosed operations at a remote server.

However Najmi, explicitly disclosed (col. 4, lines 10-17) a JMS message converted and received

at a server using a servlet.

Therefore, it would have been obvious, to one of ordinary skill in the art, at the time of the

invention, to combine the teachings of Fuchs and Najmi because both are directed towards

transparent protocols (Fuchs: 0004] & Najmi: col. 2:12-22) for enterprise messaging using

JAVA messaging services.

Per claim 2:

-the markup language components are communicated as a source file,

-the client includes a parser that parses said source file to retrieve said markup language

components and communicate said markup language components to said server.

Fuchs: [0295-0296]-load JAVA classes 2501 via class loader 2551, load descriptors (e.g. XML)

via descriptor loader 2552..., [0307]-parses the current command, extracts its parameters, and

invokes command handler as necessary, enabling communication... [0103-0105]-JMX-

compliant Management Application 1100...JMX Manager 122 to be connected with Mbean

server 2100 via protocol connector 2103...

Per claim 3:

-said command-line user interface communicates said markup language components to said

remote server via a wide area network or the Internet.

Fuchs disclosed [0111-0112]-The management level may use various management technologies,

e.g. SNMP, CMIP, CORBA, WBEM, etc (networking communication protocols)..., [0127]-An

SNMP Manager API 1123 allowing a JDMK agent 2100 to manage SNMP devices.

Fuchs failed to explicitly disclose a wide area network or the Internet.

However Najmi disclosed (col. 9, line 15) IIOP (Internet Inter-ORB Protocol) protocols.

Therefore, it would have been obvious, to one of ordinary skill in the art, at the time of the

invention, to combine the teachings of Fuchs and Najmi because both are directed towards

transparent protocols (Fuchs: 0004] & Najmi: col. 2:12-22) for enterprise messaging using

JAVA messaging services.

Per claim 4:

-said parser and said command processor comprise an engine that parses source files and

generates commands.

Fuchs: [0313-0315] & FIG. 9-Look (parse) for existing mapping relation between source and

target...and create, #927 (generate command), [0325]-Compiled metadata are generated. They

may be applied to a JDMK adaptor, as new management commands for the software platform

being managed. Thus, the compiled metadata may be viewed as JDMK executable code.

Per claim 5:

-the markup language is JMS markup language.

Fuchs: [0039]- This specification may also refer to the JAVA Dynamic Management Kit, or

JDMK, which is an embodiment of the JAVA management Extensions (JMX

specifications)...Details may be found at ...sun..., [0041]-JAVA...Sun trademark, [0123]

Per claim 6:

-the source file is an XML file.

Fuchs: [0155-0158]-Model Mbeans, defined e.g. using XML descriptors.

Per claim 7:

- the markup language is JMS markup language.

Fuchs: [0155-0165]-JAVA Message Service is an enterprise messaging API. Fuchs discloses enterprise messaging using markup language.

Per claim 8:

A method of using a command-line interface with a JMS mark-up language, comprising the steps of: providing an application including a command-line user interface that executes on a client machine and allows a user to enter markup language components;

-receiving said markup language components at a command processor and converting the markup language components into one of JMS or JMX system operations.

See rejection of limitations addressed in claim 1 above.

Therefore, it would have been obvious, to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Fuchs and Najmi because both are directed towards transparent protocols (Fuchs: 0004] & Najmi: col. 2:12-22) for enterprise messaging using JAVA messaging services.

Per claim 9:

-the markup language components are communicated as a source file, and wherein the client

includes a parser that parses said source file to retrieve said markup language components and communicate said markup language components to said command processor.

Fuchs: [0008-0009]-a mapping engine, capable of receiving descriptions of manageable software objects in a first language, for generating (parse and generate) management information in a second language. [0103—0111]-disclose a client and server, interconnected with JMX manager enabling communication protocols. [0158]-XML descriptors [0159]-JAVA to SNMP Mapping Engine (communication protocols)

Per claim 10:

-command-line user interface communicates said markup language components to said remote server via a wide area network or the Internet.

See rejection of limitations addressed in claim 3 above.

Per claim 11:

-parser and said command processor comprise an engine that parses source files and generates commands.

See rejection of limitations addressed in claim 4 above.

Per claim 12:

-markup language is JMS markup language.

See rejection of limitations addressed in claim 5 above.

Per claim 13:

-the source file is an XML file.

See rejection of limitations addressed in claim 6 above.

Per claim 14:

-markup language is JMS markup language.

See rejection of limitations addressed in claim 7 above.

Conclusion

10.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Mary Steelman, whose telephone number is (571) 272-3704. The

examiner can normally be reached Monday through Thursday, from 7:00 AM to 5:30 PM   If

attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei

Zhen can be reached at (571) 272-3708. The fax phone number for the organization where this

application or proceeding is assigned: 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be

directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Steelman

10/25/2006